

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 47 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE B.J.SHETHNA****HONOURABLE MR.JUSTICE M.C.PATEL**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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JAYANTIBHAI NARANBHAI PATEL & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MS ARCHANA R ACHARYA for Petitioner(s) : 1 - 2.
MS PB SHETH, AGP for Respondent(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE M.C.PATEL

Date : 30/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Rule. Learned AGP Ms. Sheth appears and waives service for respondent no.1 - State of Gujarat and Shri Prashant Desai appears and waives service for respondent

no.2.

2. The petitioners have challenged in this petition, the impugned show-cause notice dated 2nd January, 2006 issued under the provisions of Section 260(2) of the Bombay Provincial Municipal Corporation Act, 1949 (for short, 'the Act') calling upon the petitioners to remove the construction, which is alleged to be an illegal one, within three days from the receipt of the notice.

3. In the impugned notice at Annexure 'C' dated 2nd January, 2006, it is stated that prior to it, a show-cause notice dated 17th December, 2005 was issued to the petitioners which was replied on 23rd December, 2005 and considering the said reply, they were of the considered opinion that no sufficient evidence was produced by the petitioners and without obtaining prior written permission for putting up construction, the construction was made in the open margin land. Therefore, the petitioners were asked to remove the construction within three days, failing which it will be removed by them and the cost of the same will be recovered from the petitioners.

4. It was submitted by Ms. Acharya for the petitioners that the respondent - Corporation has misconstrued the letter dated 23rd December, 2005 as reply to the show-cause notice dated 17th December, 2005. She submitted that by a letter dated 23rd December, 2005, the petitioners had asked for time till 20th January, 2006 for producing necessary documents as one of the petitioners had undergone recent by-pass surgery and the time given to them was not sufficient. They wanted legal assistance also for producing necessary evidence in support of their say. However, the said application for time was considered to be a reply and without application of mind, the impugned notice at Annexure 'C' came to be passed.

5. The said application dated 23rd December, 2005 was not annexed to this petition. However, Mr. Prashant Desai has produced the said application dated 23rd December, 2005. From a bare reading of it, it is clear that by way of that application, the petitioners had asked for time till 20th January, 2006 for production of necessary evidence as the time given to them was too short and one of them i.e. Jayantibhai Naranbhai Patel had undergone recent by-pass surgery.

6. In view of the above, it is clear that the impugned notice at Annexure 'C' was issued without application of mind. Therefore, it is required to be quashed and set aside. Considering the contents of the application dated 23rd December, 2005, learned counsel Shri Desai frankly conceded at the bar that after giving sufficient opportunity to the petitioners, the respondent - Corporation will take necessary decision and issue notice under Section 260(2) of the Act.

7. In view of the above discussion, this petition is allowed and the impugned notice dated 2nd January, 2006 is hereby quashed and set aside. However, the respondent - Corporation is permitted to proceed further against the petitioners in pursuance of its earlier notice dated 17th December, 2005 after giving sufficient opportunity to the petitioners to file their reply and after considering their reply, they will take appropriate decision in the matter and if they are not satisfied with the reply, then only they will proceed to issue fresh notice under Section 260(2) of the Act.

8. With these observations and directions, this petition is allowed to the aforesaid extent only. Rule is

made absolute to the aforesaid extent. However, it is made clear that if the respondent no.2 - Corporation is not satisfied with the reply and proceeds to issue fresh notice under Section 260(2) of the Act, then it will be open to the petitioners to challenge the said notice in accordance with law before appropriate forum by way of appropriate proceeding.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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